

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1-171 (cancelled).

172. (currently amended) An apparatus for use in performing human interbody spinal surgery comprising:

~~a hollow tubular guard having two passages a passage for providing guided access to a disc space and a vertebral body bodies adjacent the disc space, each of said passages said guard having a proximal end, an opposite distal end, and a length from mid-longitudinal axis through said proximal end to said and distal ends, said passages being spaced apart from one another along a majority of their respective lengths; distal end of said guard having a concave curvature being at least in part curved in a single plane parallel to the mid-longitudinal axis and oriented toward and approximating the contour of the face of the adjacent vertebral bodies, said concave curvature of said distal end having a middle portion and opposed portions on either side of said middle portion, said middle portion being closer to said proximal end than said opposed portions, said guard having~~

a distracting element configured to distract two adjacent vertebral bodies, said distracting element having a blunt leading end, an opposite trailing end, upper and lower load-bearing surfaces between said leading and trailing ends, and a length from said leading end to said trailing end, said distracting element being fixed to a shaft having a portion configured to contact the posterior surfaces of the adjacent vertebral bodies to limit the depth of insertion of said distracting element into the disc space;

spine engaging portions at said distal end of said guard at least one orientation pin for holding said guard to the spine, said orientation pin having a

distal end portion configured to extend parallel to and along a majority of the length of said distracting element when said distracting element and said orientation pin are inserted into the spine~~spine-engaging portions being substantially in line with side surfaces of said guard so that said spine engaging portions do not substantially increase the outer cross-sectional dimension of said guard near the distal end of said guard, said guard having a flat portion between at least some of said spine engaging portions for preventing over penetration of said spine engaging portions into the spine; and~~

a bone removal device for forming through each of said passages in turn an implantation space.

173. (currently amended) The apparatus of claim 172, wherein ~~said guard is~~each of said passages forms a hollow tubular sleeve.

174. (currently amended) The apparatus of claim 172, wherein ~~said guard has a circular cross section~~each of said passages has a wall, said walls of said passages being spaced apart the majority of the length of the respective passages.

175. (currently amended) The apparatus of claim 172, wherein each of said passages~~passage~~ has a circular cross section.

176. (previously presented) The apparatus of claim 172, wherein said guard has an increased outer dimension portion at its proximal end.

Claim 177 (cancelled).

178. (previously presented) The apparatus of claim 172, wherein said guard has a footplate.

179. (previously presented) The apparatus of claim 172, further comprising means for cooperatively engaging to the proximal end of said guard an impaction end member for receiving an impaction force for driving said guard into the spine.

180. (previously presented) The apparatus of claim 172, further comprising a cap adapted to engage said proximal end of said guard.

181. (currently amended) The apparatus of claim 172, wherein, said passages are bridged in part proximate one of said ends of said passages~~said spine-engaging portions are selected from at least one of teeth and pins.~~

Claim 182 (cancelled).

183. (currently amended) The apparatus of claim 172, wherein at least one of said ~~spine-engaging portions~~orientation pins has a tapered leading end to facilitate placement of at least one of said spine engaging portions into the spine.

184. (currently amended) The apparatus of claim 172, wherein at least one of said ~~spine-engaging portions~~orientation pins has upper and lower surfaces that are parallel to each other.

185. (withdrawn) The apparatus of claim 172, further comprising a removable inner guard.

186. (withdrawn) The apparatus of claim 185, wherein said removable inner guard is a hollow tubular sleeve.

187. (withdrawn) The apparatus of claim 185, wherein said removable inner guard is adapted to be inserted into said guard.

188. (withdrawn) The apparatus of claim 187, wherein said inner guard has limiting means for limiting the travel of said inner guard within said guard when said inner guard is inserted into said guard.

189. (withdrawn) The apparatus of claim 185, wherein said inner guard has a collar at one end larger than said passage of said guard.

190. (currently amended) The apparatus of claim 172, wherein said bone removal device is a milling instrument~~said distal end further includes openings through said side surfaces of said guard.~~

191. (currently amended) The apparatus of claim ~~172~~190, wherein each of said passages has a mid-longitudinal axis, the mid-longitudinal axes of said passages being in a convergent relationship to each other~~said openings through said side surfaces of said guard are perpendicular to the mid-longitudinal axis of said guard.~~

192. (currently amended) The apparatus of claim ~~172~~190, wherein each of said passages has a mid-longitudinal axis, the mid-longitudinal axes of said passages being in a divergent relationship to each other~~said openings are slots through said side surfaces of said guard.~~

Claims 193-196 (cancelled).

197. (currently amended and withdrawn) The apparatus of claim 172, further comprising an implant driver sized in part for passage through one of said passages~~passage of said guard for passing an implant through said guard and into an implantation space.~~
198. (withdrawn) The apparatus of claim 197, wherein said implant driver comprises an elongated shaft having means for engaging an implant at one end and means for manipulating said implant driver at the other end of said elongated shaft.
199. (withdrawn) The apparatus of claim 198, further comprising means for limiting the depth of insertion of said implant driver into said guard.
200. (withdrawn) The apparatus of claim 199, wherein said limiting means includes a portion of said implant driver cooperating with said guard to limit the depth of insertion of said implant driver into said guard.

Claim 201 (cancelled).

202. (currently amended) The apparatus of claim ~~172~~204, wherein said ~~dise~~
~~penetrating member of said spinal distractor has a first portion for bearing against one of the endplates and a second portion for bearing against a second of the endplates, said first and second portions being~~upper and lower load bearing surfaces of said distracting element are in a parallel relationship to each other.
203. (withdrawn) The apparatus of claim 172, further comprising a tap for insertion through said guard for tapping the two adjacent vertebral bodies.
204. (withdrawn) The apparatus of claim 172, wherein said apparatus is in combination with a spinal implant.

205. (withdrawn) The apparatus of claim 204, wherein said implant is in combination with a fusion promoting material.
206. (withdrawn) The apparatus of claim 205, wherein said fusion promoting material is harvested bone.

Claims 207-350 (cancelled).

351. (new) A method for removing a portion of bone from each of two vertebral bodies adjacent a disc space in a human spine, comprising:
- inserting a distracting element between the adjacent vertebral bodies to maintain an optimal distraction of the adjacent vertebral bodies, the distracting element having a shaft;
 - placing a guard over the shaft of the distracting element to center the guard relative to the distracting element, the guard having first and second passages for providing access for a bone removal device to the spine;
 - inserting the bone removal device into the first passage;
 - creating a longitudinal cut into the adjacent vertebral body above the distracting element with the bone removal device;
 - withdrawing the bone removal device from the first passage;
 - inserting the bone removal device into the second passage;
 - creating a longitudinal cut into the adjacent vertebral body below the distracting element with the bone removal device;
 - removing the bone removal device, guard, and distracting element; and
 - inserting a spinal implant into a space prepared by the bone removal device.
352. (new) The method of claim 351, wherein the bone removal device is used to make parallel cuts of bone into the adjacent vertebral bodies.
353. (new) The method of claim 351, wherein the bone removal device is used to remove bone from both of the adjacent vertebral bodies at the same time.
354. (new) The method of claim 351, wherein the creating of the longitudinal cut into the vertebral body includes rotating a portion of the bone removal device about a central longitudinal axis of the bone removal device.

- 355. (new) The method of claim 351, further comprising inserting an orientation pin into one of the adjacent vertebral bodies.
- 356. (new) The method of claim 355, wherein the distracting element includes upper and lower load bearing surfaces that each have a length, a distal end of the orientation pin being inserted into one of the adjacent vertebral bodies to extend parallel to and along a majority of the length of each of the upper and lower load bearing surfaces.
- 357. (new) The method of claim 351, further comprising using a radiographic image to assist in distracting the adjacent vertebral bodies.
- 358. (new) The method of claim 351, further comprising removing excess bone from one of the adjacent vertebral bodies with a cutting instrument having central longitudinal axis and a fixed cutting arm extending on only one side of the central longitudinal axis.
- 359. (new) The method of claim 351, wherein the passages of the guard each have a proximal end, an opposite distal end, and a length from the proximal end to the distal end, the passages being spaced apart from one another along a majority of their respective lengths, the passages being bridged in part proximate one of the ends of the passages.